

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

GENE E. PHILLIPS,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

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C.A. No. 3-07-CV-1236-B

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR
VOLUNTARY DISMISSAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Gene E. Phillips ("Phillips" or "Plaintiff") and asks the Court to dismiss his suit against Defendant Google Inc., as authorized by Federal Rule of Civil Procedure 41(a)(2) and would respectfully show the Court as follows:

1. The complaint in the instant case was filed on June 4, 2007. Plaintiff's lawsuit was removed to this Court on July 11, 2007, and the trial of this matter has not been set.

2. Plaintiff does not wish to prosecute this cause of action further at this time.

3. Defendant will suffer no prejudice as a result of this dismissal.

4. Plaintiff is entitled to dismissal of his action pursuant to Rule 41(a)(2), Federal Rules of Civil Procedure. Rule 41(a)(2) has been held to grant a plaintiff the right voluntarily to dismiss an action if no other party will

thereby be prejudiced. *Le Compte v. Mr. Chip, Inc.*, 528 F.2d 601, 604 (5th Cir. 1976). Where, as here, dismissal is sought, a motion to dismiss should be granted where no substantial legal prejudice to the opposing parties will result. See *Durham v. Florida East Coast Ry. Co.*, 385 F.2d 366, 368 (5th Cir. 1967); 5 *Moore's Federal Practice* ¶ 41.05[1] (2d ed.).

5. Defendant has not filed a counterclaim in this lawsuit and has stipulated to the dismissal of this suit.

6. Plaintiff has not been granted a dismissal of an action based on or including the same claims as those presented in this suit.

7. It is clear that dismissal without prejudice of Plaintiff's Complaint will result in no substantial prejudice to Defendant. For all the reasons stated herein, Plaintiff respectfully requests that his Motion for Voluntary Dismissal be granted.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Gene E. Phillips requests that the Court dismiss his suit against Defendant Google Inc., as authorized by Federal Rule of Civil Procedure 41(a)(2), and grant his such other and further relief to which he may be justly entitled.

Respectfully submitted,

FRIEDMAN & FEIGER, LLP

By: /s/ Carter Boisvert
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

This is to certify that the undersigned conferred with counsel of record for Google Inc., Erin Dwyer, on July 12, 2007, and Mr. Dwyer has agreed to the relief requested in Plaintiff's Motion for Voluntary Dismissal and has stipulated to the dismissal of this lawsuit.

/s/ Carter Boisvert
Carter Boisvert

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served on all counsel of record on this the 12th day of July 2007, in accordance with the Federal Rules of Civil Procedure.

/s/ Carter Boisvert
Carter Boisvert